*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.No.5030 of 2007

% 10-9-2007

Justin Kainikaraparayil Mathew ..
Petitioner

And

$ The Regional Passport Officer,
Regional Passport Office,
Secunderabad. ..
Respondent

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Smt.N.Anula

^ Counsel for respondent : Mr.A.Rajasekhara Reddy

?CASES REFERRED :

1. 2005(1) ALT 95
2. 2005(1) ALT 751

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.5030 of 2007

Date : 10-9-2007

Between :

Justin Kainikaraparayil Mathew ..
Petitioner

And

The Regional Passport Officer,
Regional Passport Office,
Secunderabad. ..
Respondent

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.5030 of 2007

ORDER:

1. Heard Smt.N.Anula, Counsel representing the writ petitioner.

2. This Court issued *rule nisi* on 13-3-2007.

3. The Writ Petition is filed for a Writ of Mandamus declaring the action of respondent in not making the correction of place of birth in the Passport of the petitioner is wholly illegal and arbitrary and consequently to direct the respondent to correct the place of birth as Thellakom in stead of Ezhakkaranad in Passport No.F 1867475 of the petitioner and to pass such other suitable orders.

4. It is stated by the petitioner that the father of the petitioner is an employee of National Research Centre for Sorghum and as such the petitioner is residing at Hyderabad and studying B.Tech. 3rd year. He was born

on 9-1-1984 at Thellakom, District Kottayam, Kerala. It is further stated that during the year 2004, the petitioner had applied for Passport to the respondent and got a Passport on 2-12-2004 bearing No. F 1867475 and the same is valid till 1-12-2014. It is also further stated that the petitioner got selected in an MNC based at Australia and after completion of Project work at Australia, placement will be given at U.S.A. The petitioner applied for Visa to Australia and he got it. He had visited Australia thrice and his project work is completed and he is posted at U.S.A. and therefore the petitioner applied for Visa to U.S.A. While verifying the documents including birth certificate and Passport, the U.S.A. Embassy found discrepancy in the Passport with regard to the place of birth of the petitioner i.e., in stead of Thellakom it had been mentioned as Ezhakkaranad and hence the petitioner had not been issued Visa to U.S.A. It is further stated that the actual place of birth of the petitioner is Thellakom which is also evident from the Birth certificate issued by the Ettumanoor Gram Panchayat Tahsil of Kottayam District, Kerala. It is also further stated that while applying Passport inadvertently it had been mentioned in the column indicated for the place of birth as Ezhakkaranad which is permanent address in stead of Thellakom. It is

also further stated that after noticing the said discrepancy, the petitioner applied to the respondent for correction of the place of birth enclosing the birth certificate on 29-12-2006. It is further stated that the respondent, in stead of making correction, informed the petitioner to get an order from the competent Court. It is also further stated that the Government of India, Ministry of External Affairs, issued a Circular dated 18-4-2001 clarifying that Passport issuing authority after verifying the certificates can affect the correction. Therefore the action of the respondent in not considering the request of the petitioner for correction of place of birth in the Passport is wholly illegal and arbitrary.

5. The learned Counsel for the petitioner placed strong reliance on the Circular dated 18-4-2001, which reads as hereunder :

Ministry of External Affairs
(PV-I Section)

Circular

___/401/2/5/2001 *18th April, 2001*

As per the current practice, in case of change of date of birth/place of birth, the applicant is required to produce the original declaratory order from a First Class Judicial Magistrate. However in view of the recent Judgment given by the High Court of Judicature at Mumbai in CWP No.1072 of 2000 filed by Shri Jigar Harish Shah, the following clarifications are issued:

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

Sd//
(Manju)
Under Secretary (PV-I)

All Passport Issuing Authorities

Copy for information to L&T Division, MEA

6. This Court in ***Mohd.Narsullah Khan v. Regional Passport Officer, Hyderabad*** [1] observed at paras 4 to 7 as hereunder :

> *"In **Ali Imran v. Regional Passport Officer, Secunderabad (2003 (4) ALT 474 = 2003 (3) ALD 625,** I have considered the Circular dated 18-4-2001 issued by the Government of India in the Ministry of External Affairs pursuant to the Judgment of the High Court of Judicature at Bombay in Civil Writ Petition No.1072 of 2000. The instructions/clarifications issued in the said Circular read as under:*
>
> *(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.*
>
> *(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.*
>
> *(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational*

authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

In view of the above clarifications, I disposed of the said case observing as under:

Be it noted that under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the Judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court.

In this case, the petitioner has produced Secondary School Certificate to prove that his correct date of birth is 1-4-1976. Therefore, the claim of the petitioner is well supported and squarely falls in Clause (a) of the Circular dt.18-4-2001.

Following the Judgment of this Court in ***Ali***

Imran (referred above) *this Writ Petition is also disposed of directing the respondent to consider the application of the petitioner along with the Secondary School Certificate No.PC/01/0190544/2 PRIVATE, issued by the Secretary, Board of Secondary Education, Andhra Pradesh, Hyderabad, and to pass appropriate orders in the light of the observations made in the above Judgment. There shall be no order as to costs."*

7. This Court again in **Durgempudi Venkata Raghava Vs. Pass Port Officer, Ministry of External Affairs, Passport Office, Hyderabad** [2] observed at paras 9 to 14 as hereunder :

"*Placing reliance on the clarification issued on the aforesaid Circular, Writ Petition No.8533 of 2004, was disposed of directing the respondents to consider the representation of the petitioner along with the Secondary School Certificate issued by Secretary, Board of Secondary Education, Andhra Pradesh and pass appropriate orders in the light of the observations made in the said judgment.*

It is no doubt true that the present Writ Petition was filed in the year 1997 and the Government under Ministry of External Affairs issued the Circular referred to supra on 18-4-2001. As can be seen from the material available on record, the certificates which had been produced before this Court, it is clear that it is only a bona fide mistake which had crept in.

Apart from this aspect of the matter, no counter

affidavit had been filed denying the specific averment made in the affidavit filed in support of the Writ Petition that along with the application form for passport, the Travel Agent also enclosed copies of S.S.C. certificate, Intermediate certificate and also Degree certificate. Therefore, it is evident that without verifying the date of, the respondent authority just took the date of birth as filled up in the application form and issued the passport. Hence, it is needless to say that it is only a bona fide mistake.

The learned Senior Standing Counsel for Central Government, no doubt submitted that in such a situation, if the passport was issued prior to the said circular it would be proper to give an opportunity to the writ petitioner to file fresh application for issuance of passport to the competent authority.

In the light of the facts and circumstances, especially in view of Clause (a) of the Circular, dated 18-4-2001 referred to supra and also in view of the fact that all these copies of documents also had been produced at the time of filing of the application form but a bona fide mistake had crept in, the Writ Petition is disposed of with the following directions.

The petitioner shall file fresh application enclosing all the copies of certificates, which are being relied upon by him, before the respondent within a period of one month from today and the respondent is directed to take into consideration of the certificates and after verifying the same, pass appropriate orders in this regard within a period of one month thereafter..."

8. In the light of the Circular referred to supra and also the decisions specified above, this Court is of the considered opinion that the Writ Petition be disposed of directing the respondent to receive the application of the petitioner for making correction of place of birth in the Passport of the petitioner in the light of the Circular and also the decisions of this Court referred to supra and disposed of the same in accordance with Law within a period of four weeks from the date of receipt of a copy of this Order. The Writ Petition is accordingly disposed of. No order as to costs.

Justice P.S.Narayana

Date : 10-9-2007

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[1] **2005(1) ALT 95**

[2] **2005(1) ALT 751**